



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Department
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RANCHO CORDOVA CA 95741-1720

STEVE WESTLY
Chair

JOHN CHIANG
Member

MICHAEL C. GENEST
Member

Date: December 21, 2005
Case: *****
Case Unit *****
Information Letter No. 2005-8

Regarding: *****

Dear *****:

This information letter is in response to your letters dated *****, and *****, both enclosed, wherein you requested a Chief Counsel Ruling on behalf of your client ***** (the "Taxpayer"). I have discussed this request with you and your colleague ***** on several occasions. Unfortunately, the Franchise Tax Board must decline to issue a Chief Counsel Ruling in this case.

Your letters request a Chief Counsel Ruling regarding the sales factor treatment of software sales revenue. Specifically, you want to know if Taxpayer's software revenue, which includes both software and related databases, may be treated as revenue from the sale of "tangible personal property" for California franchise tax apportionment purposes and sourced under California Revenue and Taxation Code ("CRTC") §25135.

The analysis as to whether amounts received with respect to the Taxpayer's software and database platform qualify as a sale of tangible personal property is primarily factual in nature. You have raised no material issue of law in your request.

It is our understanding that Taxpayer's software and database are so intertwined that one without the other would render the overall platform ineffective or useless. Successful operation of the platform requires both pieces – software and database.

Under the provisions of FTB Notice 89-277, enclosed herewith, Chief Counsel Rulings are issued to provide the Franchise Tax Board's official conclusion on how the law is applied to a specific set of facts. Without conducting an actual audit, the Franchise Tax Board is unable to determine whether the specific items you have identified in your ruling request would meet the definition of "tangible personal property" for purposes of California income/franchise tax apportionment sales factor purposes.

Please be aware that this letter is being provided to you for informational purposes only and may not be construed as "written advice from the Board" within the meaning of Revenue and Taxation Code section 21012.

Please let me know if I can be of any further assistance.

Very truly yours,

Michael D. Vigil
Tax Counsel
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Encl(s)